

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

364C0465

HOUSE TAXATION COMMITTEE

ENGROSSED NO. **SB101** - 3/2/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Munson (David), Moore, and Staggers and Representatives Kooistra, Chicoine, and Volesky

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the grant of a permit
2 to construct a railroad.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-16A-1 be amended to read as follows:

5 49-16A-1. Terms used in this chapter mean:

6 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
7 in the business of transporting freight in intrastate commerce which it is accustomed
8 to and is capable of transporting from place to place in this state, for hire;

9 (2) "Department," the Department of Transportation created by chapter 1-44;

10 (3) "For hire," the condition of receiving remuneration of any kind, paid or promised,
11 either directly or indirectly, for the transportation of freight;

12 (4) "Freight," all property tendered for transportation by a railroad;

13 (5) "Railroad," a any association or corporation, or other entity, other than a state agency
14 or authority, engaged in operating a common carrier by rail regardless of motive
15 power used, excluding street railroads;

1 (6) "Road," all track, right-of-way, bridges, mainlines, branchlines, spurs, sidetracks,
2 interchanges, and all other fixtures and real property owned or operated by a railroad
3 to discharge its obligations as a common carrier by rail;

4 (7) "Shipper," a consignor or consignee;

5 (8) "Commission," the Transportation Commission created by § 1-44-4;

6 (9) "Negotiated in good faith," a bona fide offer to pay all costs and damages as
7 compensation for the acquisition of property desired by the applicant for the
8 construction or reconstruction of a road, including the economic costs or diminution
9 associated with or caused by the construction or reconstruction if there is a partial
10 taking of property.

11 Section 2. That § 49-16A-75 be amended to read as follows:

12 49-16A-75. A railroad may exercise the right of eminent domain in acquiring right-of-way
13 as provided by statute, but only upon obtaining authority from the Governor or the commission,
14 based upon a determination by the Governor or the commission that the railroad's exercise of the
15 right of eminent domain would be for a public use consistent with public necessity. The Governor
16 or the commission may, without limitation, consider the requirements of sections 3, 4, and 5 of
17 this Act when granting or denying an application for authority to use eminent domain. The
18 decision to grant or deny an application shall be made after reasonable notice and opportunity
19 to be heard, pursuant to chapter 1-26.

20 Section 3. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The commission shall promulgate rules in accordance with chapter 1-26:

23 (1) Establishing a form upon which a railroad may apply for authority to exercise the right
24 of eminent domain;

25 (2) Specifying the information to be submitted by an applicant; and

1 (3) Administering applications for authority to exercise the right of eminent domain.

2 Section 4. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The applicant has the burden of proving by clear and convincing evidence that the exercise
5 of the right of eminent domain is a public use consistent with public necessity.

6 Section 5. That chapter 49-16A be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A railroad's exercise of the right of eminent domain is a public use consistent with public
9 necessity only if the use of eminent domain:

10 (1) Has as a purpose providing railroad transportation to shippers in South Dakota, for
11 commodities produced, manufactured, mined, grown, used, or consumed in South
12 Dakota;

13 (2) Is proposed by an applicant with the financial resources necessary to complete the
14 proposed construction or reconstruction along with any related facilities, construction,
15 or mitigation which are necessary to protect against harm to the public safety,
16 convenience, or other adverse socioeconomic or environmental impact, as evidenced
17 by an irrevocable financing commitment from a lender with adequate capitalization to
18 fulfill its commitment;

19 (3) Is proposed by an applicant who has complied with chapter 34A-9;

20 (4) Is proposed by an applicant who has negotiated in good faith to privately acquire
21 sufficient property without the use of eminent domain;

22 (5) Is proposed by an applicant who has filed a plat, as required by § 49-16A-64, and that
23 plat specifically sets forth the route of the road to be constructed or reconstructed,
24 identifies each affected landowner, and specifies the location, along with construction
25 methods and engineering specifications for all main lines, sidings, yards, bridges,

- 1 crossings, safety devices, switches, signals, and maintenance facilities; and
- 2 (6) Provides that electric utilities, public utilities, telecommunication companies, and rural
- 3 water systems have the right to the use of the right-of-way for the placement of
- 4 underground facilities, without fee, subject to reasonable regulation as to location and
- 5 placement.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Transportation. S.J. 160

3 2/11/99 Scheduled for Committee hearing on this date.

4 2/16/99 Scheduled for Committee hearing on this date.

5 2/18/99 Scheduled for Committee hearing on this date.

6 2/18/99 Transportation Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 536

7 2/19/99 Senate Do Pass Amended, Passed, AYES 18, NAYS 15. S.J. 598

8 2/22/99 First read in House and referred to Taxation. H.J. 691

9 2/25/99 Scheduled for Committee hearing on this date.

10 2/25/99 Taxation Deferred to 41st legislative day.

11 3/1/99 Taxation Hog Housed.

12 3/1/99 House of Representatives Placed on Calendar, AYES 60, NAYS 4. H.J. 816